

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED - GR

August 10, 2010 3:15 PM
TRACEY CORDES, CLERK
U.S. DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN
BY CR / SCANNED BY bd 8-13-10

BRENDA BILLINGS-CARTER, as
Personal Representative of the estate
of Ann Billings, deceased,

Plaintiff,
vs.

Case No.
Hon.

MUSKEGON FAMILY CARE, P.C.,
And WILLIAM A. CLARK, PA-C,
jointly and severally

Defendants.

1:10-cv-792

**Paul L Maloney
Chief U.S. District Judge**

NOTICE OF REMOVAL

Defendant, United States of America, by and through its attorneys, Donald A. Davis, United States Attorney for the Western District of Michigan, and Ryan D. Cobb, Assistant United States Attorney, files this Notice of Removal of the instant case from Muskegon County Circuit Court, State of Michigan, for the following reasons:

1. The instant case was originally filed as Case No. 10-47246-NH in the Circuit Court for the County of Muskegon, State of Michigan, on or about May 3, 2010 (Copies of pleadings provided to the United States are attached as Exhibit 1.)
2. No trial has yet been had in the above referenced case.
3. The United States Attorney's Office received a copy of Plaintiff's Complaint on or about August 5, 2010, from the Department of Health and Human Services.

4. This action is removable pursuant to 42 U.S.C. § 233(c) et seq and 28 U.S.C. § 2679(d)(2). 42 U.S.C. § 233(c) provides in pertinent part as follows:

Upon a certification by the Attorney General that the defendant was acting in the scope of his employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of Title 28 and all references thereto.

5. On August 9, 2010, certification was made by Donald A. Davis, United States Attorney for the Western District of Michigan, a duly authorized delegate of the Attorney General of the United States that defendants MGH Family Health Center, d/b/a Muskegon Family Care, and William A. Clark were deemed employees of the United States Public Health Service at the time of the incident giving rise to this suit. (Certification, Exhibit 2.)

6. Pursuant to the certification, 28 U.S.C. § 2679(d)(2), and 42 U.S.C. § 233 (a), (c), and (g), this matter has been deemed to be an action against the United States. The named defendants are entitled to dismissal from this action by operation of law. The United States has been substituted as a party defendant. (Notice of Substitution, Exhibit 3.)

7. By filing this Notice of Removal, the substituted defendant, United States of America, does not waive any legal defenses in this matter, but expressly reserves its right to raise any and all legal defenses in subsequent pleadings in this Court.

WHEREFORE, the substituted defendant, United States of America, represents that the removal statutes have been complied with and thus, this case stands removed from the Muskegon

County Circuit Court to the United States District Court for the Western District of Michigan,
Southern Division.

Respectfully submitted,

DONALD A. DAVIS
United States Attorney

Dated: August 10, 2010


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